S.B.CIVIL WRIT PETITION NO.633/2006
(Miss Shweta Vs. State of Rajasthan & ors.)

DATED: 11.07.2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.K.S.Chauhan for the petitioner

The petitioner Miss Shweta, daughter of late Shri Sunil Innocent, has filed this writ petition being aggrieved of denial of compassionate appointment in place of her father who died on 13.09.2005 while working as Physical Education Teacher at Government Secondary School, Dhandhaniya, Jodhpur.

The District Education Officer (Secondary Education) Jodhpur has informed the petitioner under communication dated 09.01.2006 (Annex.8) that her application for compassionate appointment has been rejected by the Dy. Director (Secondary Education) for the reason that the deceased government servant had agreed for his children including the applicant Miss Shweta living with their mother and for his making payment of Rs.500/- per month towards their maintenance; that the applicant was living with her mother and the marriage of her parents was dissolved by mutual consent; and it was clear that the applicant was not the dependent of the deceased Sunil Innocent.

The petitioner contends that the respondents authorities have acted wholly illegally in rejecting her application for compassionate appointment. With reference to the provisions of Rajasthan Compassionate Appointment of Dependants of Deceased Government Servants Rules, 1996 ('the Rules of 1996') the petitioner asserts that she answers to the definition of "dependent" under Rule 2 (c) and, thus, the action of the respondents in rejecting her application is entirely illegal and unjustified.

In reply to show cause notice, the respondents have contended that the petitioner was not dependent on her father; that mother of the petitioner is also in government service; and that the petitioner was living with her mother and was getting only Rs.500/- towards maintenance from her father. According to the respondents, it cannot be said that the petitioner was wholly dependent on her father; and that apart, mother of the petitioner being in government service, the petitioner was not entitled to get compassionate appointment.

Though the application made by the petitioner for compassionate appointment has not been rejected on the ground of her mother being in government service but such a significant fact stated in the reply filed by the respondents has not been put to contention by filing any rejoinder nor has

been disputed during the course of submissions. This aspect apart, in the fact situation of the present case, the respondents cannot be faulted in denying compassionate appointment to the petitioner in place of her deceased father.

From the document placed on record by the petitioner, it appears that the marriage of her parents had broken down and in relation to the application under Section 125 Cr.P.C. made by her mother on behalf of the children, a settlement was arrived at between the parties on 27.09.1999 (Annex.1) whereby father of the petitioner agreed to make payment of Rs.500/- per month for the three minor children including the petitioner living with their mother thus,-

> "मैं विपक्षी सुनील इन्नोसेन्ट समझाईश के आश्वस्त स्वेच्छापूर्वक मंजूर करता हूं कि मैं अपनी पत्नी श्रीमती ज्योति के साथ रह रही अपने तीनों अवयस्क संतानों कुमारी श्वेता, कुमारी अर्पिता एवं अक्षय के भरण पोषण हेतु 500-500 (पांच सौ - पांच सौ रूपये) मासिक जुमला पन्द्रह सौ रूपये मासिक 01.09.99 से प्रतिमाह अपनी पत्नी ज्योति को अदा करता रहूंगा ।"

It also appears that marriage of the parents of the petitioner was dissolved with their mutual consent on 08.01.2003 (decree Annex.2). The address of the deceased Sunil Innocent has been stated in his death certificate (Annex.5) as 9th A Pal Road, Sardarpura, Jodhpur whereas registered address of the petitioner has been stated as

231/A, Rameshwar Nagar, Basni, Jodhpur. The address of the petitioner is the same as that of her mother. It remains undenied and undeniable that the petitioner has been living with her mother only; and her father, the deceased government servant, was only contributing Rs.500/- towards her maintenance during her minority.

The date of birth of the petitioner has been stated as 19.12.1986 in her Secondary School Certificate (Annex.3). Obviously, she was above 18 years of age at the time of death of her father on 13.09.2005. Even the force of the settlement (Annex.1) for payment of maintenance at Rs.500/- per month had ceased on the petitioner attaining majority. The petitioner has not been shown under any disability for the purpose of continuous operation of the provision of Section 125 Cr.P.C. There is nothing further on record to show if the petitioner was dependent on her father at the time of his death.

The definition of "dependent" as contained in Rule 2(c) of the Rules of 1996 reads thus:

> "(c) "Dependant" means a spouse, son, unmarried or widowed daughter, adopted son/daughter legally adopted by the deceased Government servant during his/her life time and who were wholly dependant on the deceased Government servant at the time of his/her death."

It is apparent that the applicant seeking compassionate appointment ought to be "wholly dependent" on the deceased government servant at the time of his death. Such being not the position in the present case, application for compassionate appointment has rightly been rejected.

The very object of providing compassionate appointment to a dependant of deceased employee who dies in harness is to relieve the family of hardship and distress caused due to sudden demise of the bread-earner of the family. Such provisions for compassionate appointments, by their very nature, are in exception to the general procedure prescribed for making appointments; and are required to be construed and applied keeping in view the fact that by making such appointment other eligible persons are deprived of their chance to seek employment. In the fact situation of the present case, this court is clearly of opinion that it shall be unjust for the other eligible unemployed persons if a post is permitted to be taken over by the petitioner only because she is daughter of the deceased employee irrespective of the fact that she was neither living with her father nor was wholly dependant upon him.

Where the family was not living with the deceased employee; where the petitioner was living with her mother only; and where it has also come on record that mother of the

petitioner is in government employment, this court is satisfied that the action of the respondents in rejecting the claim of the petitioner for compassionate appointment is neither illegal nor has caused any injustice.

There is no force in this writ petition and the same is, therefore, dismissed. No costs.

(DINESH MAHESHWARI),J.

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